

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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AVOCENT REDMOND CORP.,	:	
	:	Civil Action No. 10-CV-6100-PKC
Plaintiff,	:	
	:	
- against -	:	
	:	
RARITAN AMERICAS, INC.,	:	
	:	
Defendant.	:	
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DECLARATION OF DANNY L. BEASLEY

I, Danny L. Beasley, hereby declare as follows:

1. I was employed by Apex PC Solutions, Inc. from December 1992 through February, 1999. I understand that Apex is now known as Avocent Redmond ("Avocent"). I joined Apex in 1992 as a design engineer. In about March, 1993, I was promoted to Director of Engineering.

2. As the Director of Engineering, I oversaw the development of, and assisted in the design and modification of, Apex's products, including its KVM switch products. I was also personally familiar with certain KVM switches Apex sold or delivered to Microsoft in the early 1990s that had been modified to allow multiple users to use the switches at the same time. As I recall, Apex only made six of these KVM switches and they were only made for Microsoft. At that time, Apex was a very small company. In 1992 when I joined, through 1993, we only had about five engineers, including me. These customized KVM switches made for Microsoft were very simple in their design, and I recall seeing very little documentation on those customized switches. I learned about the structure and operation of these switches from my co-worker, Tom Greene, because there was little documentation on those customized switches. To the best of my

knowledge, none of these customized Microsoft switches were in service by 1999 when I left Apex.

3. In May 2011, I received a listing of directories and files that had been retrieved from an electronic search of Avocent's computer network. I understood that the directories and files on the list were the result of searches for files relating to the software version control system (called "PVCS") that Apex used in the 1990s, and for any engineering documents (including development, hardware, or software files) from 1992-1995. Based on my knowledge of the customized Microsoft KVM switches, these search criteria should have retrieved files relating to those customized KVM switches provided that the directories or files were created or modified any time between January 1, 1992 and December 31, 1995. There were no directories or files on the listing that appeared to relate to the customized Microsoft KVM switches.

4. For the second round of searching, I suggested that Chris Foster look for directories belonging to me, Paul Lacrampe, and Robert Seifert, without any date restrictions. In addition, I suggested that Chris Foster, one of Avocent's information technology ("IT") staff, search for any PVCS files, regardless of the date of those files. I received a portable hard drive from a data processing vendor containing a directory belonging to Robert Seifert, and several PVCS files. None of those files related to the customized KVM switches made for Microsoft.

5. I was then asked to work directly with Mr. Foster in a third round of searching. In this third round, I went to Avocent to go through Avocent's current backup media and offline backup media to try to locate all engineering documents from the 1990s that may be on those backups. In this round of searching, I was specifically asked to also look for files relating to KVM switches Apex sold or delivered to Microsoft in the early 1990s, even though these files

would have been included in the earlier searches. There were no date restrictions or other types of restrictions on the backup media we were to search.

6. Mr. Foster and I conducted these searches, and located directories of mostly software and PVCS files from the 1990s, and those files were exported to CDs with one copy being given to me to review further, and a second copy was given to Avocent's litigation counsel.

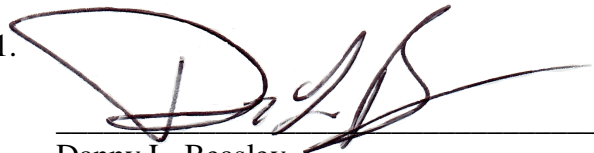
7. Before Mr. Foster and I finished reviewing all of the backup tapes, the tape drive used to read the tapes failed. Specifically, the tape drive jammed while cataloging one of the old tapes, and the drive would not work after the jam was cleared. Mr. Foster was going to see if he could get another drive so that we could review the rest of the tapes later. He later told me he received a replacement drive and got the system back up and running.

8. When the tapes were ready for searching, Mr. Foster setup a Live Meeting session in which I could remotely review the contents of the backup tapes along with Mr. Foster. We continued our search of these backup tapes, including searching for files relating to the customized KVM switches sold or delivered to Microsoft in the early 1990s. We did not locate any of these files in the tapes restored using the new tape drive.

9. I estimate that I personally spent about 10 hours on the activities described above. In all of this searching, I did not see any files related to the customized KVM switches Apex made for Microsoft in the early 1990s. I am not surprised that any additional documents relating to those switches could not be located. These switches were unique, customized products made only for Microsoft. Only about six of them were made. In addition, Apex's engineering department was very small and documenting unique products like these was not as high a priority as actually developing new products that we hoped to sell on a wide-spread basis.

10. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 12th day of August, 2011.



Danny L. Beasley